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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

23 Cr. 490 (SHS)

6 ROBERT MENENDEZ, WAEL HANA,  
7 FRED DAIBES,

8 Defendants.

9 Trial  
10 -----x

11 New York, N.Y.  
12 May 13, 2024  
13 9:30 a.m.

14 Before:

15 HON. SIDNEY H. STEIN,

16 District Judge  
17 -and a Jury-

18 APPEARANCES

19 DAMIAN WILLIAMS  
20 United States Attorney for the  
21 Southern District of New York  
22 BY: PAUL M. MONTELEONI  
23 DANIEL C. RICHENTHAL  
24 ELI J. MARK  
25 LARA E. POMERANTZ  
CATHERINE E. GHOSH  
Assistant United States Attorneys  
-and-  
CHRISTINA A. CLARK  
National Security Division

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1 APPEARANCES CONTINUED  
23  
4 PAUL HASTINGS LLP  
5 Attorneys for Defendant Menendez  
6 BY: ADAM FEE  
7 AVI WEITZMAN  
8 ROBERT D. LUSKIN  
9 RITA FISHMAN10  
11 GIBBONS, P.C.  
12 Attorneys for Defendant Hana  
13 BY: LAWRENCE S. LUSTBERG  
14 ANNE M. COLLART  
15 CHRISTINA LaBRUNO  
16 RICARDO SOLANO, Jr.  
17 ANDREW J. MARINO  
18 ELENA CICOGNANI  
19 JESSICA L. GUARRACINO20 CESAR DE CASTRO  
21 SETH H. AGATA  
22 SHANNON M. McMANUS  
23 Attorneys for Defendant Daibes24  
25 Marwan Abdel-Raman, Interpreter (Arabic)  
Bachar Alhalabi, Interpreter (Arabic)  
Rachel Wechsler, Paralegal Specialist (USAO)  
Conor Hamill, Paralegal Specialist (USAO)  
Braden Florczyk, Paralegal Specialist (USAO)  
Justin Kelly, DOAR

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THE DEPUTY CLERK: United States v. Robert Menendez,  
Wael Hana, and Fred Daibes.

MS. POMERANTZ: Good morning. Lara Pomerantz for the government. I'm joined by Eli Mark, Daniel Richenthal, Christina Clark, Paul Monteleoni, and Catherine Ghosh, as well as Connor Hamill, a paralegal specialist in our office.

MR. FEE: Good morning.

THE COURT: Good morning.

9 MR. FEE: Good morning, your Honor. For Senator  
10 Menendez, Adam Fee. With me is Avi Weitzman, and to the left  
11 of Senator Menendez, Rita Fishman.

THE COURT: Thank you, good morning. Welcome.

13 MR. LUSTBERG: Good morning. Lawrence S. Lustberg on  
14 behalf of defendant Will Hana. We are at counsel table is Annie  
15 Collart and Ricardo Solano.

16 THE COURT: Thank you, good morning. Please be  
17 seated.

18 MR. DE CASTRO: For Mr. Daibes, Cesar De Castro, Seth  
19 Agata, and Shannon McManus.

20 THE COURT: All of the defendants are present.

21 MR. FEE: I'm sorry. I forgot to introduce Mr. Justin  
22 Kelly from DOAR who will be assisting all of the defense with  
23 hot seat, meaning the tech, and putting up evidence, your  
24 Honor.

25 THE COURT: Good morning, sir. I have the agreed

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1 statement of the case. I also received a statement of joint  
2 statement of names as well as places and entities that I am  
3 going to read to the jurors.

4 I've changed my mind in one respect. Rather than send  
5 out those to another courtroom, those who say they can sit, I'm  
6 going to do the sidebars in the jury deliberation room. So,  
7 the defendants can be there, two lawyers from each side can be  
8 there, and we'll have a pool reporter there as well. I think  
9 that's best, because then I can question people who have  
10 problems in a more private setting. That's what we're going to  
11 do.

12 The jurors that come up have already been randomized  
13 below in the jury assembly room, and they will come up and they  
14 will have cards, 1 through at this point 102. We will sit them  
15 and I will refer to them by numbers. That's how, for their  
16 privacy, that's how it will be.

17 MR. RICHENTHAL: Your Honor.

18 THE COURT: Sir.

19 MR. RICHENTHAL: We certainly don't intend to bring  
20 our whole team. Can we bring three lawyers rather than two?  
21 We had been dividing and conquering, and we intend to bring  
22 three.

23 THE COURT: Then I have to allow three for each of the  
24 defendants. You can switch off. Two.

25 I see the parties have not arrived at a stipulation on

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1 the Rule 15 motion. You'll get a decision on the Rule 15  
2 motion tomorrow. You also will get a decision on the experts.  
3 I can't promise that tomorrow, but it will come within the next  
4 few days.

5 Is there still a dispute about documents being turned  
6 over? I received letters on Thursday and Friday. Has that  
7 been resolved by the parties?

8 MR. RICHENTHAL: Is your Honor referring to documents  
9 with respect to speech or debate or something broader?

10 THE COURT: Yes.

11 MR. RICHENTHAL: We have not received any notice or  
12 documents with respect to speech or debate. We continue to  
13 make that request. We think that, absent some form of  
14 identification, that it would be highly disruptive to the  
15 trial.

16 I also want to make very clear because I think that  
17 the defense's letter, at least in my reading, may have  
18 suggested we were asking for something that we're not asking  
19 for.

20 We're not asking the senator to waive speech or debate  
21 at this time. What we're asking for is notice of what  
22 materials if he were to waive he would use, so we can prepare.  
23 We think we're entitled to notice.

24 THE COURT: Wait. You want documents that implicate  
25 the speech and debate clause that he intends to use during his

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1 case in chief?

2 MR. RICHENTHAL: Correct. Or through our witnesses  
3 during our case.

4 And I want to be clear, we already have, we believe --

5 THE COURT: No. Wait. He's already presumably turned  
6 over -- let me get the second phrasing here.

7 He's already turned over defendant's non-impeachment  
8 exhibits intended for use in the government's case in chief,  
9 correct?

10 MR. RICHENTHAL: Starting a few days ago,  
11 unfortunately, long after the April 26 deadline, we started to  
12 get materials. We've gotten materials on a near daily basis  
13 since then. We don't know if that production is complete.

14 THE COURT: Mr. Fee, have you turned over defendant's  
15 non-impeachment exhibits intended for use in the government's  
16 case in chief? Yes or no?

17 MR. FEE: Yes, your Honor.

18 THE COURT: Next. Go ahead, sir.

19 MR. RICHENTHAL: If --

20 THE COURT: That's their obligation under the  
21 agreement of the parties. Witness list Rule 26(2) disclosures,  
22 defense exhibits to be used in a defense case to be produced 10  
23 days before the start of the defendant's case. Correct?

24 MR. RICHENTHAL: That's correct.

25 THE COURT: What else are you asking for?

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1                   MR. RICHENTHAL: If the representations that the  
2 materials we've received are a complete set, then I suppose I'm  
3 not asking for anything else. Those materials did include some  
4 materials that appear on their face to implicate speech and  
5 debate. It included some materials concerning a resolution.

6                   THE COURT: Whatever they involve.

7                   MR. RICHENTHAL: Okay.

8                   THE COURT: My concern is that the parties are living  
9 up to the agreement they agreed to, that was put on the record  
10 I believe first by Mr. De Castro, if I'm not mistaken, and then  
11 restated by me and set forth in a minute order.

12                  Mr. Fee has said defendant's non-impeachment exhibits  
13 intended in the government's case in chief have been disclosed.

14                  What more do you want? It sounds like you're not  
15 accepting "yes." I don't know.

16                  MR. RICHENTHAL: If that's --

17                  THE COURT: There has been too much gamesmanship here.  
18 And I want it to end now. So, I understand where you may be a  
19 little leery of the representation, but you have a firm  
20 representation.

21                  MR. RICHENTHAL: I have a firm representation and I  
22 accept it, and I'm very pleased to have that.

23                  The only outstanding materials we are aware of, and we  
24 don't know what we don't know, would be any additional  
25 Rule 17(c) materials that the defense may have obtained and not

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1 turned over. They did turn over 17(c) material last week and  
2 told us it was complete as of that date. We asked can you turn  
3 others over as you receive them, and we were told that was not  
4 something they were willing to do.

5 THE COURT: Mr. Fee.

6 MR. FEE: They have everything.

7 THE COURT: Everybody has to operate in good faith  
8 here. In a trial there are always things that come up that  
9 need adjustment, but there has been a good faith basis for the  
10 parties working together. I am not sure I've seen that.

11 Mr. Fee.

12 MR. FEE: They have everything, your Honor.

13 THE COURT: Okay. They have everything.

14 MR. RICHENTHAL: As long as we have everything as it  
15 comes in, meaning forward looking as well, that's great.  
16 That's the thing they declined to commit to.

17 THE COURT: Adam, as materials come in, you'll turn  
18 them over, correct?

19 MR. FEE: Yes, your Honor.

20 THE COURT: Let's proceed.

21 Were the parties able to work out authenticity  
22 stipulations? Sir.

23 MR. MONTELEONI: Your Honor, we've had a very  
24 productive week in that regard.

25 THE COURT: Have the parties been able to work out

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1 stipulations in regard to authenticity? Yes? No? In part?

2 MR. MONTELEONI: In part. And what I was trying to  
3 say is that it has been very productive, and a large number  
4 have been. There are one or two outstanding items that still  
5 could have a substantial impact on the length of trial.

6 THE COURT: Continue working.

7 MR. MONTELEONI: We are.

8 THE COURT: What's the current estimate of the  
9 government's case? It was four to six. Presumably it's still  
10 the same.

11 MR. MONTELEONI: Well, I think that if there had been  
12 no progress on the stipulations, we would have said more like  
13 five to seven. It is now more like four to six. Maybe  
14 four-and-a-half to six-and-a-half.

15 THE COURT: Thank you. I think we'll proceed.

16 The jury department has their current estimate is --  
17 we're about to find out when the panel will come up. I'm told  
18 they're on their way up. It will take a while for my deputy to  
19 call the names. I want to make sure -- I'm sorry. The  
20 numbers. I want to make sure they're sitting in the places  
21 that they're called.

22 I'm going to step off the bench while that happens.  
23 Thank you.

24 (Jury selection ensued)

25 (Adjourned to May 14, 2024, at 9:45 a.m.)